

Kingstree Global Fund, Ltd. - In Liquidation Reconciliation of NAV and Management Fee for 2009									
NAV	Fee	Man	Int	Adv	Adm	Adv	Man	Fee	NAV
\$2,739,642,865.67	\$2,786,047,004.52	\$2,809,864,310.34	\$2,827,086,115.00	\$2,783,621,709.79	\$2,773,327,072.43	\$2,721,574,894.06	\$1,952,751,003.47	\$1,942,767,106.34	\$2,765,735,093.44
\$2,694,749,201.24	\$2,656,330,178.61	\$2,669,584,560.25	\$2,701,737,662.00	\$2,727,882,497.00	\$2,735,444,095.80	\$2,719,289,347.10	\$1,852,745,101.25	\$1,879,324,766.25	\$2,727,185,094.29
\$23,893,631.43	\$129,744,125.31	\$130,419,750.87	\$125,110,401.80	\$55,619,012.74	\$17,662,976.75	\$5,246,446.80	\$71,706,261.22	\$87,578,143.49	\$16,550,614.76
\$2,414,003.61	\$2,422,570.13	\$3,504,259.39	\$3,033,850.14	\$3,079,400.14	\$3,468,658.84	\$3,401,918.74	\$2,404,133.17	\$2,453,620.19	\$3,457,168.80
\$92,393.71	\$162,182.91	\$130,424.45	\$154,441.04	\$69,545.77	\$64,526.73	\$2,627.64	\$19,037.71	\$109,471.42	\$64,149.02
\$3,310,436.50	\$3,320,275.22	\$3,319,730.70	\$3,377,172.08	\$3,409,853.17	\$3,419,540.13	\$3,394,111.62	\$2,815,181.28	\$2,844,152.71	\$3,408,746.37
\$3,310,436.50	\$3,320,275.22	\$3,319,730.70	\$3,377,172.08	\$3,409,853.17	\$3,419,540.13	\$3,394,111.62	\$2,815,181.28	\$2,844,152.71	\$3,408,746.37

Kingate Euro Fund, Ltd. - In Liquidation		Reconciliation of NAV and Management and Admin Fees for 2000											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Reported Gross Assets before		€ 227,330,654.50	€ 234,049,181.38	€ 247,280,770.22	€ 246,982,940.16	€ 253,565,955.73	€ 258,021,325.25	€ 262,544,773.34	€ 261,870,310.39	€ 260,958,431.34	€ 267,612,248.79	€ 269,726,885.27	€ 276,773,480.39
Reported Net of Investments		€ 222,120,386.40	€ 228,150,970.36	€ 237,719,231.81	€ 236,925,738.35	€ 242,711,048.31	€ 237,092,462.34	€ 245,728,506.35	€ 244,385,675.75	€ 239,765,894.08	€ 245,521,427.78	€ 250,376,265.79	€ 251,110,058.03
Management and Performance fees													
True Gross Assets before		€ 5,270,268.10	€ 5,897,205.02	€ 9,562,544.41	€ 9,053,202.43	€ 24,640,356.42	€ 16,615,555.04	€ 12,564,642.03	€ 24,184,473.26	€ 12,369,311.01	€ 17,345,617.09	€ 23,262,992.36	€ 184,547,851.57
and performance fees													
Management fee paid		€ 284,238.30	€ 292,500.22	€ 309,113.47	€ 307,478.68	€ 310,556.65	€ 323,528.06	€ 329,180.47	€ 327,337.98	€ 329,644.50	€ 334,593.01	€ 334,455.11	€ 345,466.83
True management fee due		€ 6,597.97	€ 7,371.51	€ 11,091.16	€ 11,316.50	€ 11,000.16	€ 27,161.08	€ 21,019.84	€ 19,020.80	€ 19,243.09	€ 21,455.77	€ 21,579.19	€ 31,039.35
Over payment		€ 277,650.48	€ 285,128.71	€ 297,100.28	€ 296,162.17	€ 299,556.31	€ 296,367.30	€ 307,161.15	€ 311,707.09	€ 310,701.21	€ 319,126.87	€ 312,770.14	€ 319,880.64
Admin fee paid		€ 19,925.54	€ 19,474.64	€ 20,591.31	€ 20,472.56	€ 21,101.03	€ 21,541.46	€ 21,851.38	€ 21,795.25	€ 21,968.79	€ 22,272.14	€ 22,282.82	€ 23,002.31
True admin fee due		€ 439.64	€ 430.83	€ 453.35	€ 451.48	€ 467.44	€ 1,525.44	€ 1,374.87	€ 1,540.76	€ 1,013.03	€ 1,023.49	€ 1,441.91	€ 1,102.56
Over payment		€ 18,485.90	€ 19,043.81	€ 19,737.96	€ 19,719.45	€ 19,633.65	€ 19,723.01	€ 20,476.51	€ 20,254.50	€ 20,955.11	€ 21,248.65	€ 20,832.61	€ 21,909.75

Re-calculation of NAV and Management and Acctg fees for 2001												
Reported Gross Assets before management and performance fees	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
€ 287,519,076.15	€ 285,527,195.53	€ 289,056,753.71	€ 309,944,905.35	€ 312,845,501.01	€ 322,552,634.44	€ 325,370,600.78	€ 328,199,184.11	€ 332,402,027.01	€ 339,127,077.32	€ 351,515,943.43	€ 360,512,010.94	€ 3,660,433,612.36
Reported NAV at Investment	€ 270,592,661.92	€ 274,027,869.21	€ 283,643,171.80	€ 294,271,152.85	€ 310,840,436.22	€ 310,258,811.57	€ 302,313,706.07	€ 305,246,956.05	€ 308,348,976.00	€ 317,775,952.04	€ 324,561,676.47	€ 3,600,100,029.54
and performance fees	€ 16,926,395.23	€ 19,709,126.12	€ 4,712,581.60	€ 12,723,651.50	€ 1,003,014.79	€ 12,093,322.86	€ 23,037,094.71	€ 22,952,123.15	€ 24,053,049.04	€ 21,961,147.28	€ 17,054,920.66	€ 200,325,782.40
Management fee paid	€ 191,553.13	€ 191,503.99	€ 172,945.94	€ 187,493.51	€ 391,008.45	€ 409,810.79	€ 406,713.50	€ 410,366.98	€ 415,503.53	€ 423,921.34	€ 439,619.32	€ 4,625,742.26
Fee management fee due	€ 23,637.46	€ 18,279.16	€ 8,391.93	€ 19,454.87	€ 2,104.37	€ 15,897.22	€ 28,101.32	€ 28,490.28	€ 30,066.31	€ 27,451.43	€ 27,317.51	€ 22,561.68
Over payment	€ 338,240.63	€ 347,514.84	€ 307,053.96	€ 347,630.44	€ 380,950.61	€ 377,632.51	€ 377,632.13	€ 363,436.72	€ 396,469.91	€ 416,201.02	€ 423,655.33	€ 4,575,150.63
Admin fee paid	€ 24,096.46	€ 24,097.17	€ 24,831.98	€ 25,800.61	€ 26,032.87	€ 26,879.08	€ 27,315.74	€ 27,665.54	€ 28,226.10	€ 29,244.70	€ 29,749.42	€ 321,300.69
True admin fee due	€ 1,879.11	€ 1,873.48	€ 1,392.01	€ 1,308.47	€ 1,664.63	€ 1,656.50	€ 1,919.03	€ 1,910.92	€ 1,957.61	€ 1,419.42	€ 1,443.11	€ 16,454.81
Over payment	€ 32,321.20	€ 22,823.55	€ 24,439.65	€ 24,481.94	€ 24,370.95	€ 25,212.58	€ 25,397.02	€ 25,402.85	€ 25,280.29	€ 27,325.20	€ 28,302.00	€ 304,602.88

Kingate Euro Fund, Ltd. - in Liquidation Re-calculation of NAV and Management and Admin fees for 2003											
Reported gross assets before management and performance fees	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov
€ 400,542,768.32	€ 403,574,635.85	€ 413,069,883.19	€ 410,297,074.45	€ 410,474,826.76	€ 420,542,188.91	€ 424,230,227.12	€ 437,285,379.02	€ 436,727,819.15	€ 447,002,671.21	€ 445,966,553.59	€ 449,131,244.80
€ 373,015,851.04	€ 371,450,100.59	€ 377,517,126.60	€ 380,234,916.40	€ 375,140,773.44	€ 397,729,223.11	€ 401,624,930.39	€ 417,750,243.89	€ 415,016,270.81	€ 419,038,751.05	€ 404,489,873.41	€ 397,054,227.46
€ 27,526,917.28	€ 31,766,715.25	€ 35,512,646.59	€ 41,462,158.05	€ 43,314,053.33	€ 32,759,965.02	€ 22,555,256.73	€ 19,855,133.03	€ 41,181,362.14	€ 27,954,120.12	€ 41,488,862.18	€ 50,877,016.54
Management fee paid	€ 520,678.49	€ 504,468.54	€ 516,193.35	€ 512,871.24	€ 523,623.53	€ 525,677.74	€ 536,287.78	€ 559,731.72	€ 556,284.55	€ 557,458.17	€ 551,414.06
Over payment	€ 466,269.21	€ 464,766.12	€ 471,921.55	€ 451,043.55	€ 468,932.97	€ 497,212.75	€ 502,093.66	€ 514,912.50	€ 491,301.85	€ 527,778.44	€ 507,599.59
Fee management fee due	€ 34,908.67	€ 39,708.42	€ 46,415.81	€ 51,167.57	€ 38,444.90	€ 28,154.12	€ 24,818.92	€ 53,976.70	€ 34,555.15	€ 51,858.58	€ 43,146.17
Over payment	€ 466,269.21	€ 464,766.12	€ 471,921.55	€ 451,043.55	€ 468,932.97	€ 497,212.75	€ 502,093.66	€ 514,912.50	€ 491,301.85	€ 527,778.44	€ 507,599.59
Admin fee paid	€ 33,336.84	€ 33,589.20	€ 34,379.16	€ 34,148.68	€ 34,879.31	€ 35,001.38	€ 35,308.33	€ 35,937.14	€ 36,306.86	€ 37,203.68	€ 37,117.47
Fee admin fee due	€ 2,291.54	€ 1,491.92	€ 2,757.15	€ 3,450.66	€ 1,893.96	€ 1,877.34	€ 1,602.59	€ 2,331.85	€ 2,327.45	€ 3,451.71	€ 4,167.17
Over payment	€ 31,045.30	€ 32,097.28	€ 31,622.11	€ 30,697.92	€ 33,027.65	€ 33,127.47	€ 33,705.67	€ 34,284.67	€ 33,972.91	€ 34,876.52	€ 33,923.95
Over payment	€ 31,045.30	€ 32,097.28	€ 31,622.11	€ 30,697.92	€ 33,027.65	€ 33,127.47	€ 33,705.67	€ 34,284.67	€ 33,972.91	€ 34,876.52	€ 33,923.95

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Re-calculation of NAV and Management and Admin fees for 2013

Kinggate Euro Fund, Ltd. - in Liquidation

The data available, so figures are based on average increases for monthly price.

Month you cannot have a negative amount due to NAV, therefore amount owed for this month is 0.00

Month	Reported gross assets before management and performance fees	Reported NAV at Investment	True gross assets before management fees	Management fees paid	True management fee due	Over payment	Admin fee paid	True admin fee due	Over payment
Jan	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Feb	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Mar	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Apr	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
May	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Jun	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Jul	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Aug	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Sep	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Oct	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Nov	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Dec	€ 503,630,684.75	€ 513,200,172.92	€ 513,200,172.92	€ 22,951,192.05	€ 22,951,192.05		€ 41,917.28	€ 41,917.28	
Total	€ 6,290,164,281.36	€ 6,290,164,281.36	€ 6,290,164,281.36	€ 270,577,761.12	€ 270,577,761.12		€ 499,139.08	€ 499,139.08	

Kingate Euro Fund, Ltd. - In Liquidation												
Re-calculation of NAV and Management and Admin fees for 2005												
Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Reported gross assets before	€ 498,800,100.66	€ 478,634,880.41	€ 481,156,587.79	€ 489,171,145.56	€ 479,557,815.07	€ 501,980,924.50	€ 484,614,078.72	€ 488,254,240.32	€ 492,107,057.19	€ 496,152,619.93	€ 512,151,881.18	€ 525,670,110.15
Reported net of investments	€ 461,378,955.52	€ 471,235,275.89	€ 451,072,158.67	€ 439,181,115.77	€ 443,944,207.30	€ 521,555,223.27	€ 453,975,246.03	€ 446,475,176.54	€ 444,279,310.45	€ 459,162,831.45	€ 473,746,463.37	€ 5,957,550,521.78
True gross assets before management	€ 17,421,225.41	€ 7,392,553.12	€ 30,006,419.13	€ 49,989,409.84	€ 35,015,400.60	€ 39,980,703.19	€ 38,125,980.23	€ 29,326,594.29	€ 23,526,560.66	€ 31,873,105.49	€ 52,189,050.90	€ 419,471,144.54
and performance fees												
Management fee due	€ 623,500.23	€ 576,193.50	€ 601,448.23	€ 599,949.52	€ 702,483.66	€ 605,767.60	€ 670,317.00	€ 615,371.57	€ 620,160.77	€ 640,429.65	€ 650,037.90	€ 7,454,280.66
Inv. management fee due	€ 46,776.53	€ 17,427.16	€ 17,608.02	€ 43,516.26	€ 41,428.28	€ 35,027.46	€ 70,771.74	€ 25,753.66	€ 35,641.63	€ 60,458.25	€ 65,655.82	€ 574,276.43
Comp. payment	€ 576,723.69	€ 589,244.16	€ 563,040.21	€ 544,930.26	€ 632,495.35	€ 370,110.11	€ 573,594.25	€ 585,191.97	€ 580,149.14	€ 573,953.60	€ 562,183.58	€ 6,910,544.33
Admin fee paid	€ 41,514.72	€ 39,836.38	€ 40,046.48	€ 40,630.08	€ 40,773.70	€ 40,134.03	€ 40,636.99	€ 40,973.68	€ 41,294.37	€ 42,642.62	€ 43,734.40	€ 490,284.21
True assets fee due	€ 3,114.54	€ 615.88	€ 2,004.07	€ 4,165.81	€ 3,977.52	€ 3,326.39	€ 3,445.19	€ 1,933.00	€ 2,652.79	€ 4,426.69	€ 4,304.92	€ 34,903.02
Over payment	€ 35,403.19	€ 39,220.52	€ 37,542.36	€ 36,459.47	€ 36,949.11	€ 43,445.31	€ 37,959.82	€ 32,191.20	€ 36,990.80	€ 38,215.78	€ 39,428.52	€ 453,450.24

Kingate Euro Fund, Ltd. - in Liquidation
Re-calculation of NAV and Management and Admin fees for 2007

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Reported gross assets before management and performance fees	€ 512,862,020.78	€ 525,536,439.62	€ 540,541,427.08	€ 554,769,900.14	€ 558,484,416.93	€ 561,086,926.56	€ 567,687,448.46	€ 576,724,121.37	€ 577,644,990.00	€ 575,927,984.30	€ 600,101,101.01	€ 620,878,807.51	€ 6,781,073,550.98
Reported net of investments	€ 492,155,154.12	€ 451,554,431.11	€ 469,013,513.92	€ 502,333,102.35	€ 525,742,450.26	€ 527,596,123.87	€ 535,050,858.72	€ 541,707,291.75	€ 527,642,721.00	€ 553,431,763.35	€ 576,715,665.10	€ 580,502,504.61	€ 6,216,433,187.48
True gross assets before management and performance fees	€ 30,705,104.60	€ 43,981,558.71	€ 45,527,913.16	€ 45,956,297.75	€ 37,743,720.67	€ 39,960,703.19	€ 41,938,451.75	€ 34,926,823.62	€ 50,004,207.00	€ 23,503,721.05	€ 31,385,485.91	€ 50,074,952.55	€ 174,643,762.30
Management fee paid	€ 641,077.61	€ 656,700.55	€ 679,676.70	€ 693,487.35	€ 690,105.52	€ 702,483.66	€ 709,659.31	€ 720,505.15	€ 777,054.24	€ 714,923.43	€ 760,125.47	€ 762,121.07	€ 6,420,842.45
True management fee due	€ 12,102.43	€ 54,477.45	€ 47,179.46	€ 47,121.00	€ 47,179.46	€ 49,983.35	€ 52,420.58	€ 43,455.54	€ 42,505.26	€ 29,113.76	€ 31,821.89	€ 30,592.94	€ 589,300.95
Over payment	€ 601,943.10	€ 612,736.09	€ 626,160.33	€ 650,325.06	€ 652,499.26	€ 667,438.73	€ 677,236.61	€ 678,550.98	€ 671,769.70	€ 671,923.43	€ 728,294.83	€ 732,528.13	€ 7,009,547.50
Accrual for paid True admin fee due	€ 42,652.03	€ 43,729.76	€ 44,503.81	€ 46,124.70	€ 46,482.19	€ 46,775.70	€ 47,264.80	€ 48,000.27	€ 48,076.91	€ 47,924.84	€ 50,611.77	€ 50,452.50	€ 565,215.43
True admin fee due	€ 3,555.54	€ 3,650.58	€ 3,789.29	€ 3,815.82	€ 3,842.19	€ 3,960.34	€ 4,060.93	€ 4,151.81	€ 4,187.17	€ 4,261.66	€ 4,399.38	€ 4,414.74	€ 39,500.98
Excess payment	€ 40,136.49	€ 40,079.18	€ 40,714.52	€ 42,308.88	€ 42,602.81	€ 42,714.46	€ 43,043.87	€ 43,848.36	€ 43,889.74	€ 43,663.18	€ 46,212.39	€ 45,937.76	€ 329,714.45

Kingate Euro Fund, Ltd. - in Liquidation
Re-calculation of NAV and Management and Admin Fees for 2008

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Total
Reported gross assets before	€ 624,466,046.31	€ 636,825,364.79	€ 646,518,722.97	€ 652,502,909.88	€ 656,343,490.62	€ 650,636,379.71	€ 656,049,748.44	€ 645,697,634.13	€ 650,844,258.80	€ 636,119,135.13	€ 6,456,079,691.71
Reported NAV of investments	€ 575,798,690.84	€ 577,404,925.86	€ 564,408,857.47	€ 594,057,311.51	€ 601,071,367.33	€ 596,830,037.84	€ 608,611,172.15	€ 612,996,056.74	€ 624,250,198.04	€ 585,119,462.66	€ 5,941,730,100.65
True gross assets before management and performance fees	€ 42,687,355.46	€ 59,480,438.94	€ 81,908,865.11	€ 58,445,598.36	€ 54,272,123.29	€ 53,806,321.67	€ 47,438,576.29	€ 32,719,577.39	€ 26,594,060.76	€ 51,015,673.33	€ 514,349,590.86
Management fee paid	€ 796,166.71	€ 808,148.40	€ 815,628.64	€ 820,429.36	€ 813,795.47	€ 820,052.19	€ 807,122.04	€ 813,555.32	€ 795,168.92	€ 8,070,099.61	
Over payment	€ 60,834.19	€ 74,150.55	€ 192,387.33	€ 73,037.00	€ 67,340.15	€ 67,257.90	€ 59,198.12	€ 40,899.47	€ 33,242.58	€ 63,769.59	
Admin fee paid	€ 719,748.36	€ 721,756.16	€ 705,761.07	€ 742,571.64	€ 752,889.31	€ 746,037.57	€ 760,763.97	€ 766,232.57	€ 780,312.75	€ 731,399.33	€ 7,427,162.63
True admin fee due	€ 51,973.79	€ 53,007.44	€ 53,809.21	€ 54,307.37	€ 54,826.92	€ 54,151.92	€ 53,746.47	€ 53,746.88	€ 54,169.23	€ 52,945.00	€ 527,034.13
Over payment	€ 4,090.54	€ 4,950.91	€ 4,864.38	€ 4,517.29	€ 4,517.02	€ 4,478.26	€ 3,946.37	€ 2,723.22	€ 2,215.40	€ 4,245.99	€ 42,803.89
True admin fee due	€ 47,923.25	€ 48,056.93	€ 46,991.92	€ 49,442.89	€ 50,109.93	€ 49,673.67	€ 50,654.20	€ 51,017.65	€ 51,955.92	€ 48,697.01	€ 494,525.24

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IN THE SUPREME COURT OF BERAMUDA

CIVIL JURISDICTION

COMMERCIAL LIST

2011: 454

B E T W E E N:

KINGATE GLOBAL FUND LIMITED (IN LIQUIDATION)

KINGATE EURO FUND LIMITED (IN LIQUIDATION)

and

KINGATE MANAGEMENT LIMITED

FIM LIMITED

FIM ADVISERS LLP

First Plaintiff

Second Plaintiff

First Defendant

Second Defendant

Third Defendant

FIRST PENINSULA TRUSTEES LIMITED (AS TRUSTEE OF THE ASHBY TRUST)

Fourth Defendant

PORT OF HERCULES TRUSTEES LIMITED (AS TRUSTEE OF THE EL PRELA TRUST)

Fifth Defendant

ASHBY HOLDING SERVICES LIMITED

Sixth Defendant

EL PRELA GROUP HOLDING SERVICES LIMITED

Seventh Defendant

MR CARLO GROSSO

Eighth Defendant

MR FEDERICO CERETTI

Ninth Defendant

Annex D

Kingate Global
Redemptions per year - per audited accounts

Year	Amount US\$
1995	912,850
1996	5,576,991
1997	27,693,109
1998	106,077,591
1999	100,599,409
2000	289,609,315
2001	334,868,765
2002	361,043,478
2003	382,707,855
2004	376,755,400
2005	477,663,891
2006	466,838,862
2007	568,037,370
2008	574,993,835
	<u>3,498,384,586</u>

Kingate Euro
Redemptions per year - per audited accounts

Year	Amount EUR
2000	50,566,495
2001	38,977,268
2002	69,236,560
2003	60,217,286
2004	88,577,979
2005	110,141,597
2006	107,850,422
2007	110,119,291
2008	118,685,935
	<u>635,686,898</u>

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION
COMMERCIAL LIST

2010: 454

BETWEEN:

- (1) KINGATE GLOBAL FUND LIMITED (IN LIQUIDATION)
(2) KINGATE EURO FUND LIMITED (IN LIQUIDATION)

Plaintiffs

and

- (1) KINGATE MANAGEMENT LIMITED
(2) FIM LIMITED
(3) FIM ADVISERS LLP
(4) FIRST PENINSULA TRUSTEES LIMITED (AS TRUSTEE OF
THE ASHBY TRUST)
(5) PORT OF HERCULES TRUSTEES LIMITED (AS TRUSTEE OF
THE EL PRELA TRUST)
(6) ASHBY HOLDINGS SERVICES LIMITED
(7) EL PRELA GROUP HOLDING SERVICES LIMITED
(8) MR CARLO GROSSO
(9) MR FEDERICO CERETTI
(10) ASHBY INVESTMENT SERVICES LIMITED
(11) EL PRELA TRADING INVESTMENTS LIMITED
(12) ALPINE TRUSTEES LIMITED

Defendants



AMENDED STATEMENT OF CLAIM

SEDGWICK CHUDLEIGH
E.W. Pearman Building
20 Brunswick Street
Hamilton, HM 10
Bermuda

(Attorneys for the First and Second Plaintiffs)

EXHIBIT B

On behalf of: Claimant
F O Walters
First Affidavit
Exhibit "FOW1"
16 November 2011

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

BRITISH VIRGIN ISLANDS

BVIHCV 2011/

BETWEEN:

**FIRST PENINSULA TRUSTEES LIMITED
(AS TRUSTEE OF THE ASHBY TRUST)**

Claimant

-and-

(1) IRVING H PICARD

**(as trustee for the substantively consolidated SIPA liquidation of Bernard L
Madoff Investment Securities LLC and the estate of Bernard L Madoff)**

(2) KINGATE GLOBAL FUND LIMITED (IN LIQUIDATION)

(acting by William R Tacon and Richard E Fogerty as joint liquidators)

(3) KINGATE EURO FUND LIMITED (IN LIQUIDATION)

(acting by William R Tacon and Richard E Fogerty as joint liquidators)

(4) CARLO GROSSO

(as representative of the adult beneficiaries of the Ashby Trust)

(5) MAC IMRIE

**(as representative of the minor, unborn and unascertained beneficiaries of the
Ashby Trust)**

(6) HER MAJESTY'S ATTORNEY GENERAL OF THE BRITISH VIRGIN ISLANDS

Defendants

AFFIDAVIT OF

FRANK OLIVER WALTERS

**I, FRANK OLIVER WALTERS of L'Estoril, 31 Avenue Princesse Grace, Monte Carlo, MC
98000, Monaco MAKE OATH and SAY as follows:**

INTRODUCTION

1. I am a Manager – Trust & Corporate Services at Moore Stephens Services SAM, whose offices are at L'Estoril, 31 Avenue Princesse Grace, Monte Carlo, MC 98000, Monaco ("**Moore Stephens Monaco**").
2. Moore Stephens Monaco is a company authorised by the government of the Principality of Monaco. It acts as administrator to First Peninsula Trustees Limited, being a company incorporated on 3 August 1984 under the laws of the Republic of Liberia, whose registered office is at 80 Broad Street, Monrovia, Republic of Liberia (the "**Ashby Trustee**").
3. The facts and matters set out in this Affidavit are within my own knowledge, save where the contrary appears, and are true. Where such facts and matters are not within my own personal knowledge, they are true to the best of my information and belief and derive from the sources stated.
4. Exhibited to this Affidavit is a bundle of documents marked "Exhibit FOW1". References in this Affidavit to page numbers are to page numbers in Exhibit FOW1.
5. Nothing in this Affidavit is intended to be or should be read as a waiver of privilege on the part of the Ashby Trustee or its 100% subsidiaries.
6. This Affidavit is structured as follows:

Section heading	Page
Introduction, purpose of the application and background	2
Overview	7
The Ashby Trust	8
The Kingate Funds and Kingate Management Limited	20
Legal action against the Ashby Trustee	29
Claims by Irving H Picard against the Ashby Trustee	34
The Ashby Trustee's approach to seeking representations in connection with the present application	42

Directions sought by the Ashby Trustee	45
Costs	46
Conclusion	48

Purpose of the Application

7. I make this Affidavit in support of an application by the Ashby Trustee for an order for the following directions in respect of (i) a claim brought against the Ashby Trustee and others in the United States Bankruptcy Court of the Southern District of New York (the "**Bankruptcy Court**") with case reference Adv. Pro. No. 09-1161 (BRL) (the "**Third Amended Complaint**") and (ii) a claim brought against the Ashby Trustee and others in the High Court of Justice of England and Wales, Queen's Bench Division, Commercial Court with claim number 2010 Folio 1478 (the "**English Claim**"), the subject matter of both of which is explained further below:

7.1 That Mr Carlo Grosso ("**Mr Grosso**") is appointed and shall act in these proceedings as representative of the adult beneficiaries of the Ashby Trust and that his reasonable costs incurred in connection with this application be paid from the assets currently held on the trusts of the Ashby Trust;

7.2 That Mr Mac Imrie is appointed and shall act in these proceedings as representative of the interests of the minor, unborn and/or unascertained beneficiaries of the Ashby Trust and that his reasonable costs incurred in connection with this application be paid from the assets currently held on the trusts of the Ashby Trust;

7.3 That the Ashby Trustee shall be indemnified from the assets currently held on the trusts of the Ashby Trust for its costs of making this application;

7.4 In respect of the Third Amended Complaint, that the Ashby Trustee shall be indemnified from the assets currently on the trusts of the Ashby Trust for its costs of making the motions to withdraw the reference and motions to dismiss articulated in the Confidential Affidavit, including costs arising

from any adverse costs orders made against it in pursuance of those motions; and

7.5 In respect of the English Claim, that the Ashby Trustee shall be indemnified from the assets currently held on the trusts of the Ashby Trust for its costs of obtaining advice in relation to the English Claim, considering that advice and taking such steps as appropriate in light of that advice, including costs arising from any adverse costs orders made against it in pursuance of those steps.

8. The Ashby Trustee's application is also supported by my second Affidavit, of even date. That second Affidavit (the "**Confidential Affidavit**") concerns facts and matters which are privileged and/or confidential, including details of US Counsel's advice on the approach the Ashby Trustee should take with respect to the Third Amended Complaint. The facts and matters in the Confidential Affidavit are relevant to the Court's consideration of the application, and for that reason, the Confidential Affidavit will be lodged with the Court together with this Affidavit. For reasons which will be obvious to the Court, the Ashby Trustee considers that it is not appropriate for the material in that Confidential Affidavit to be provided to the Defendants to the present application, a number of whom are themselves parties to the English claim and/or the Third Amended Complaint.

Background

9. Schedule 1 to this Affidavit contains a list of defined terms used in this Affidavit.

10. This application arises as a result of the following:

10.1 The Third Amended Complaint, which was filed in the Bankruptcy Court on 20 May 2011 naming the Ashby Trustee and 17 others (page 1), including the Ashby Trust and the El Prael Trust which have no legal personality. The Plaintiff is Irving H Picard ("**Mr Picard**"), the trustee for the liquidation of the business of Bernard L Madoff Investment Securities LLC ("**BLMIS**"). The Third Amended Complaint was deemed to be served on the Ashby Trustee on 10 August 2011, as is explained further below; and

10.2 The English Claim, which was issued by Mr Picard in the High Court of Justice of England and Wales, Queen's Bench Division, Commercial Court on 10 December 2010, against the Ashby Trustee and eleven

others. The English Claim was served on the Ashby Trustee on 16 September 2011, as is explained further below.

The Third Amended Complaint and the English Claim are together, the "**Picard Claims**".

11. As has been well publicised, on 12 March 2009, the principal of BLMIS, Mr Bernard Madoff ("**Madoff**") pleaded guilty before the New York court to the criminal charges laid against him, admitting to operating a "Ponzi scheme" through the investment advisory side of BLMIS. He has since been sentenced to prison for 150 years.
12. Shortly after his arrest, the United States Securities and Exchange Commission ("**SEC**") commenced proceedings against Madoff and BLMIS, and a receiver was appointed over the assets of BLMIS. Shortly thereafter, the SEC consented to a combination of those proceedings with an application by the Securities Investor Protection Corporation ("**SIPC**"). SIPC filed an application alleging, among other things, that BLMIS was not able to meet its obligations as they came due and, accordingly, its customers needed the protection of the Securities Investor Protection Act ("**SIPA**"). On 15 December 2008, Mr Picard was appointed trustee for the liquidation of the business of BLMIS pursuant to SIPA.
13. One of the Ashby Trustee's Co-Defendants to the Picard Claims is Port of Hercules Trustees Limited, a company incorporated on 6 February 1993 under the laws of the British Virgin Islands (the "**BVI**"), which is trustee of the El Praela Trust (the "**El Praela Trustee**"). The El Praela Trustee was appointed trustee of the El Praela Trust on 17 August 2006 in place of Alpine Trustees Limited ("**Alpine Trustees**"), also a Co-Defendant to the Picard Claims, which was trustee of the El Praela Trust from its settlement until that date. Moore Stephens Monaco also acts as administrator to the El Praela Trust, and I have sworn similar affidavits in support of an equivalent application by the El Praela Trustee, also seeking directions in relation to the Picard Claims. The Ashby Trust and the El Praela Trust are together, the "**Trusts**".
14. Two of the other Co-Defendants to the Third Amended Complaint are Kingate Global Fund Limited ("**Kingate Global**") and Kingate Euro Fund Limited ("**Kingate Euro**") (together, the "**Kingate Funds**"), as to which, see further paragraphs 70 to 77 below.

15. The claims made against the Ashby Trustee and the El Prael Trustee (together, the "Trustees") in the Third Amended Complaint are complex and the sums claimed are substantial, totalling approximately US\$976 million. They fall into two broad categories:

15.1 Claims under Title 11 of the United States Bankruptcy Code sections 544, 547, 548 and 550 and the New York Debtor and Creditor Law sections 273 to 279 to avoid and recover allegedly preferential and fraudulent transfers allegedly received by the Trustees (which claims are applicable to subsequent transferees by virtue of section 550 of that statute); and

15.2 Common law claims asserted under New York law, the essence of which is that the Trustees possess BLMIS customer property and should be required to return those funds to Mr Picard for distribution among the claimants in the BLMIS liquidation.

16. The claims made against the Trustees in the English Claim are also complex, and the amount claimed mirrors the amount claimed in the Third Amended Complaint, namely approximately US\$976 million. The relief sought and/or claims made can be summarised as follows:

16.1 A declaration pursuant to English and US law that the Trustees hold on constructive trust for BLMIS subsequent transfers or the proceeds thereof allegedly received by the Trustees by reason of the initial transfers having been made in breach of the fiduciary duties owed to BLMIS by Madoff and/or the BLMIS management;

16.2 An account and/or enquiry as to the whereabouts of the alleged subsequent transfers and/or their traceable proceeds;

16.3 Claims that the Trustees make restitution of the alleged subsequent transfers or the proceeds thereof because, as a matter of New York law, the transfers from BLMIS to the Kingate Funds were void *ab initio*;

16.4 Claims for damages and/or equitable compensation for alleged knowing receipt in breach of trust;

16.5 A contribution and/or indemnity at common law or under the Civil Liability (Contribution) Act 1978; and

- 16.6 Claims under section 213 of the Insolvency Act 1986 and/or the common law and/or the Cross-Border Insolvency Regulations 2006 based on allegations that the Trustees were knowingly party to fraudulent trading at BLMIS.
17. The Kingate Funds (now in liquidation) are open-ended investment companies established under the laws of the BVI whose purpose was to seek long-term capital growth by allocating share capital to an investment adviser selected to execute their investment objectives.
18. As will be explained further below, the manager of the Kingate Funds was Kingate Management Limited ("KML"), which is the Third Defendant to the Third Amended Complaint and the First Defendant to the English Claim. At all material times, the shares in KML were held by a nominee appointed by the Trustees or their respective 100% subsidiaries.
19. While the applications made by the Trustees are distinct, they arise from the same facts and the Trustees' positions with respect to the Picard Claims are, materially, the same.
20. By way of further background, the Trustees have previously made similar applications for directions to the Eastern Caribbean Supreme Court, High Court of Justice of the BVI (the "**BVI Court**") as to how they should proceed in respect of other, related, proceedings commenced against them and seven others in the Supreme Court of Bermuda by the Kingate Funds (the "**Bermuda Proceedings**"). With the exception of Mr Picard, the Defendants to those applications were the same as the Defendants to this present application.

OVERVIEW

21. In supporting this present application of the Ashby Trustee, this Affidavit will:
- 21.1 Explain the formation of the Ashby Trust and the source of its assets;
- 21.2 Summarise the relationship between the Ashby Trust and KML;
- 21.3 Summarise the relationship between KML, the Kingate Funds, Mr Picard and other parties;

- 21.4 Explain the various actual and prospective claims faced by the Ashby Trustee, and its 100% subsidiaries, including the Picard Claims;
 - 21.5 Explain the Ashby Trustee's approach to seeking representations in connection with the present application;
 - 21.6 Set out the directions sought; and
 - 21.7 Summarise the costs of steps already taken by the Ashby Trustee and the estimate of future steps to be taken by it.
22. Certain other facts and matters are summarised in the Confidential Affidavit, referred to above.

THE ASHBY TRUST

23. On 24 March 1994, the Ashby Trust was formed under the laws of Jersey. Its settlor is Mr Grosso and its trustee is the Ashby Trustee. The Ashby Trust is an irrevocable discretionary trust. A copy of the instrument of trust relating to the Ashby Trust dated 24 March 1994 (the "**Trust Deed**") is at page 130.

The Ashby Trustee

24. The Ashby Trustee is a company incorporated on 3 August 1984 under the laws of the Republic of Liberia, whose registered office is at 80 Broad Street, Monrovia, Republic of Liberia. It has provided and continues to provide professional trustee services to a number of trusts, in addition to the Ashby Trust.
25. Both the Ashby Trustee and Moore Stephens Monaco are 100% subsidiaries of Moore Stephens & Company Bermuda, a partnership which is a member firm of Moore Stephens International Limited ("**Moore Stephens International**"), an international accounting and consulting association.
26. The Ashby Trustee currently has a single corporate director, Port of Hercules Directors Limited, being a company incorporated on 28 November 2000 under the laws of the BVI, whose registered office is Palm Grove House, PO Box 3186, Wickhams Cay 1, Road Town, Tortola, BVI ("**Port of Hercules Directors**"). Port of Hercules Directors was appointed director of the Ashby Trustee on 6 February 2001.

27. The current directors of Port of Hercules Directors, and the dates of their appointment, are as follows:
- 27.1 Frank O Walters (appointed 28 November 2000);
 - 27.2 Phillip A Evans (appointed 28 November 2000); and
 - 27.3 David R Brand (appointed 30 March 2006). Mr Brand replaced a previous director, Mary Magagli, who was appointed on 28 November 2000. Ms Magagli died on 20 March 2006.
28. A table showing the dates of appointment and resignation of the directors of the Ashby Trustee prior to the appointment of Port of Hercules Directors is at page 152.
29. The shares of Port of Hercules Directors are held by the El Prela Trustee on trust for Moore Stephens & Company Bermuda. The company secretary of the Ashby Trustee and of Port of Hercules Directors is First Peninsula Secretaries Limited, which is also a 100% subsidiary of Moore Stephens & Company Bermuda.

The Trust Deed

30. The Trust Deed contains the following provisions, relevant for the purposes of this application:
- 30.1 Paragraph C1, which provides that the property of the Ashby Trust as at the date of settlement was US\$5,000 (page 150);
 - 30.2 Recital (b) (page 133) and paragraph A6 (page 136), which provides that further "*money investments or other property*" may be "*paid or transferred to or otherwise placed under [the Ashby Trustee's] control*";
 - 30.3 Paragraph A1, which provides that the proper law of the Ashby Trust at the date of its settlement was the law of the Island of Jersey (page 133);
 - 30.4 Paragraph A15, which provides that the Ashby Trustee "*... may from time to time by instrument declare that the proper law of this trust shall be the law of some other place in any part of the world under which the terms of this trust shall be capable of taking effect and such law shall thereupon become the proper law of this trust...*" (page 141) (for an explanation of the Ashby Trustee's exercise of this power in changing the proper law of